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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,764	04/17/2006	Gary Steven Ungless	R&G-108	3763

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

EXAMINER

GEDEON, BRIAN T

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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04/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,764	Applicant(s) UNGLESS ET AL.	
	Examiner Brian T. Gedeon	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-27,31,33,36,37,39-43 and 45-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-27,31,33,36,37,39-43 and 45-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment after non-final filed 26 December 2007.

Oath/Declaration

2. The objection made to the oath in the previous Office action has been withdrawn in view of Applicant's arguments submitted with the amendment.

Claim Rejections - 35 USC § 112

3. The 35 U.S.C. 112, second paragraph, rejection made against claim 37 has been withdrawn in view of Applicant's arguments submitted with the amendment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 23-27, 31, 33, 36, 37, 39-43 and 45-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bach et al. (GB 2 207 579 A -- reference furnished by Applicant on 17 April 2007) in view of Kristbjarnarson (US Patent no. 6,049,730).

In regard to claims 23-25, 39, 41-43, and 45-49, Bach et al. describe an ECG monitor consisting of a transmitter with two compartments 1, 2. The compartments are 30 mm in diameter and 5 mm thick. These compartments clip onto a standard ECG electrode 4, page 3 lines 1-8. Figures 1 and 2 illustrate these embodiments, wherein figure 2 shows that maximum lateral dimension of compartment 1 is less than the maximum lateral dimension of the ECG electrode. The compartment 1 is attached to electrode 4 via a stud contact 5. It is not clear from Bach et al. if the stud contact 5 allows for releasable attachment, but the Examiner considers that the stud contact to be capable of being releasably attachable. The studs are also considered to be the support means for securing the compartments (i.e., the monitor) to the ECG electrode 4. The compartments 1 and 2 contain electrical circuitry for storing power sources and processing the ECG signals, page 3 lines 6-7 and 13-26. A lead 3 allows for connection of compartment 1 to compartment 2, which are connected to electrodes 4, page 3 lines 4-6. However, Bach et al. do not disclose the use of a processor, or an accelerometer. Kristbjarnarson, in a similar field of endeavor, discloses an external monitor 10 for monitoring a user's heart, figures 5 and 8, comprising: a cardiac sensor 13; an accelerometer (inclinator containing accelerometer sensors) 16; a support means (harness, not labeled in fig. 8) for securing the cardiac sensor and the accelerometer in position for sensing the user's heart beat and movement (see col. 9, lines 9-20); a memory 34; and a processor (recording equipment) 12 coupled to the cardiac sensor and the accelerometer for generating cardiac data 20 and movement data 22 (see col. 6, lines 20-32). The monitor system is externally mounted to the patient. Also, the

accelerometer 16 is capable of measuring in any of the three dimensions, figure 5. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bach et al. with an accelerometer, since Kristbjarnarson teaches that it is known in the art to include an activity or movement sensor such as an accelerometer in an ambulatory physiological recorder, and modification of the Bach et al. reference in view of Kristbjarnarson would involve combining elements known in the prior art in known ways to yield predictable results.

Further in regard to claims 43 and 44, the monitor 10 of Kristbjarnarson includes a processor 12/32 to process signals it receives from the electrodes 13 according to a predetermined parameter in order to generate the cardiac data and modifies that parameter in response to signals it receives from the accelerometer (see col. 8, lines 5-25).

In regard to claims 26, 27, 50, and 51, Bach et al. discloses the claimed invention with the exception of specific dimensions for the maximum lateral dimensions of the ECG electrode or of the monitor. It would have been obvious to one with ordinary skill in the art at the time the invention was made to utilize 55 mm or less and 35 mm or less for the maximum lateral dimensions since our reviewing courts have held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d

1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

In regard to claims 31 and 52, Kristbjarnarson has a memory 34.

In regard to claims 33, 37, 40, 53, and 54, Kristbjarnarson describes an accelerometer (inclinometer containing accelerometer sensors) 16; a support means (harness, not labeled in fig. 8) for securing the cardiac sensor and the accelerometer in position for sensing the user's heart beat and movement (see col. 9, lines 9-20); and a processor (recording equipment) 12 coupled to the cardiac sensor and the accelerometer for generating cardiac data 20 and movement data 22 (see col. 6, lines 20-32). The monitor system is externally mounted to the patient.

In regard to claims 36, The Examiner considers studs connectors 5 and 6 of Bach et al. to be capable of attachments to an interface, separate from the electrodes 4.

Allowable Subject Matter

6. The indicated allowability of claim 36 as originally presented, is withdrawn in view of the newly discovered reference(s) to Bach et al. (GB Patent no. 2 207 579 A), in view of Kristbjarnarson (US Patent no. 6,049,730). Rejections based on the newly cited reference(s) are presented above.

Response to Arguments

7. Applicant's arguments with respect to claims 23-27, 31, 33,36, 37, and 39-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/
Supervisory Patent Examiner, Art Unit 3766

Carl H. Layno
Examiner
Art Unit 3766

/B. T. G./
Examiner, Art Unit 3766